



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Cr1.R.C. (MD)No.722 of 2019

Asho Jepre Samuel

: Petitioner/Accused

Vs.

State rep. by
The Inspector of Police,
Thallakulam Police Station,
Madurai District.
(Crime No.430 of 2019)

: Respondent/Respondent

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records and set aside the order passed by the Judicial Magistrate No.2, Madurai dated 05.09.2019 relating to Cr.M.P.1408/2019.

For Petitioner : Mr.G.Karuppasamy Pandian
for M/s.P.Balasubramanian

For Respondent : Ms.Anantha Devi,
Government Advocate [Criminal Side]

O R D E R

The present Criminal Revision Petition has been filed against the order passed by the Judicial Magistrate No.II, Madurai, dated 05.09.2019, rejecting the sureties executed by the petitioner on the ground that they are not related to the petitioner.

2. Initially, the trial Court has granted statutory bail to the petitioner on 28.05.2019 on the ground that the prosecution had not completed the investigation and filed the final report within the statutory period of 60 days. Therefore, the trial Court had granted statutory bail by imposing certain conditions, which are as follows:-

"1) Executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties.

2) The petitioner shall deposit a sum of Rs.3,00,000/- to the credit of Crime No.430 of 2019.

3) The sureties shall affix their photographs and left thumb impression in the surety bond to ensure their identity.

4) The petitioner shall report before the respondent police daily at 10.30 a.m until further orders.



5) The petitioner shall not temper with evidence or witness either during investigation or trial.

6) The petitioner shall not abscond either during investigation or trial."

3. Since the conditions imposed by the trial Court appear to be onerous, the petitioner approached this Court by filing Crl.O.P(MD) No.11783 of 2019. This Court vide order dated 26.08.2019 disposed of the Criminal Original Petition by setting aside the condition to deposit of a sum of Rs.3,00,000/- alone and other conditions in the said order stood unaltered. Thereafter, when the petitioner/accused produced the sureties, the same were rejected on 05.09.2019 on the ground that they are not related to the petitioner, against which the present revision has been filed.

4. The learned counsel for the petitioner/accused would submit that when the statutory bail is granted to the accused, no onerous condition shall be imposed by the Court and this was considered by the various Courts including the High Court and the Hon'ble Supreme Court of India. He would also submit that originally when bail was granted on 28.05.2019, the trial Court had merely imposed the condition of producing two sureties and no specific mention is made that the sureties ought to be related to the accused. Therefore, the order of rejection of the sureties by the trial Court is beyond the scope of the original order passed by the trial Court on 28.05.2019 and on this ground alone, the criminal revision is liable to be allowed.

5. Moreover, the learned counsel would also submit that this Court in **Sagayam @ Devasagayam vs. State rep. by the Inspector of Police, G-7, Chepet Police Station, Chennai (2017-1-L.W. (Cr1.)800)** has held in para 74, as under:-

"74. From the above analysis, we come to the conclusion that when the accused executes bail bond, when the surety executes surety bond, Court cannot insist production of property documents, surety need not be a Government servant or a blood relative or a local surety."

6. According to the above observation of the High Court, the sureties need not be a Government servant or a blood relative or a local surety. The learned counsel would also refer to the unreported decision of this Court **dated 01.10.2019 made in Crl.O.P.No.26341 of 2019**, where the order of the learned Judicial Magistrate imposing the condition that one of the sureties must be a blood relative was found to be onerous by the High Court and ultimately it was set aside. Therefore, the learned counsel would submit that on this ground the revision petition is liable to be allowed.



7.The learned Government Advocate (crl.side) appearing for the respondent would oppose the above prayer for allowing the revision petition on the ground that the petitioner being a foreigner, he might abscond.

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8.At this, the learned counsel for the petitioner would submit that the said apprehension has no basis, since the passport of the petitioner has already been impounded by the trial Court. In case, the trial Court has granted statutory bail to the petitioner/accused, no onerous conditions shall be imposed except normal conditions.

9.Considering the submission of the learned counsel appearing for the petitioner as well as the respondent, this Court is in agreement with the submission made on behalf of the learned counsel appearing for the petitioner/accused. Firstly, the approach of the trial Court in rejecting the sureties is erroneous for the simple reason that when the statutory bail was granted on 28.05.2019, the trial Court has merely imposed condition for production of two sureties. However, when two sureties were produced, the same was rejected by the trial Court on the ground that the two sureties were not blood relatives of the accused. The trial Court has clearly exceeded its jurisdiction by expanding the scope of the original bail granted to the petitioner. Therefore, on this ground alone, this Court is of the considered view that the revision petition is liable to be allowed. Moreover, the Courts have consistently held that the sureties need not be blood relatives and that imposing of condition to produce the blood related sureties is onerous. In such view of the matter, this Court is of the considered opinion that the rejection of the sureties produced by the petitioner/accused by the trial Court cannot be countenanced in law.

10.For the above said reason, the order dated 05.09.2019 passed by the learned Judicial Magistrate No.II, Madurai rejecting the sureties, is set aside and the criminal revision petition is allowed. The trial Court is directed to accept the two sureties produced by the petitioner/accused, if it is otherwise in order.

Sd/-

Assistant Registrar(P & A)

// True Copy //

Sub Assistant Registrar(CS)

Skn



To

1.The Judicial Magistrate No.2, Madurai.

2.The Inspector of Police,
Thallakulam Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.P.BALASUBRAMANIAN, Advocate Sr. No.91962

ORDER MADE IN
Cr1.R.C. (MD) No.722 of 2019
Dated:-15.10.2019

DKS (CO)
TR(22.10.2019) 4P 5C